

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

UNITED STATES OF AMERICA,	§	
	§	
v.	§	Cr. No. C-06-274 (1)
	§	
JOSE E. HINOJOSA,	§	

ORDER DENYING MOTION FOR RETURN OF PROPERTY

Defendant Jose E. Hinojosa (“Hinojosa”) was convicted and sentenced by this Court, and final judgment was entered against him in his criminal case on August 28, 2006. (Cr. C-06-274, D.E. 26.) On April 17, 2008, the Clerk received a document from Hinojosa titled as a motion for the return of seized property. This Court ordered that the motion be severed from this criminal case, and a new civil case file was opened in C.A. No. C-08-141, styled Hinojosa v. United States.

This Court held a hearing in that case on December 5, 2008, and subsequently granted the United States’ motion to dismiss Hinojosa’s motion for return of property. Specifically, the Court found it “clear” from the testimony of Hinojosa’s prior attorney, Armando Cavada, and from documents submitted by the United States that “the United States is no longer in possession of any of the items or money sought by Hinojosa.” (C.A. No. C-08-141, D.E. 20 at 2.) The Court expressly stated that it made no findings “as to whether or not Hinojosa may have a cause of action against Cavada for any failure to promptly return Hinojosa’s property or money.” (Id. at 2.) Final judgment in that case was entered on December 5, 2008. (C.A. No. C-08-141, D.E. 19.) According to the docket sheet, the Court’s order of dismissal and final judgment in that case were sent to Hinojosa, but later returned as undeliverable. (C.A. No. C-08-141, D.E. 21, 22.) The docket sheet does not reflect that they were ever re-mailed to him.

On January 21, 2010, the Clerk received from Hinojosa another document titled as a “Motion for the Return of Seized Property” bearing only his criminal case number. Again, he names the United States as a respondent and states that property seized by a federal agency at the time of his arrest has never been returned. (D.E. 58.)

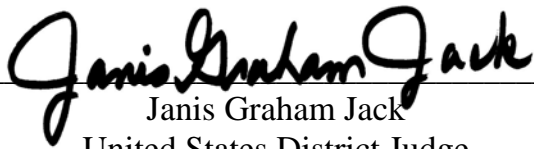
Rather than sever this latest motion and have it be treated as a civil case, requiring the payment of the filing fee or an *ifp* application, the Court instead denies Hinojosa’s latest motion for the same reasons set forth by the Court in the prior civil action. The issues he raises therein have already been decided in the prior lawsuit and there is no need to waste the resources of this Court or to require the United States to respond again to identical allegations. See United States v. Davenport, 484 F.3d 321, 326 (5th Cir. 2007) (“Under doctrine of res judicata, final judgment on the merits bars further claims by parties or their privies based on same cause of action...”); Id. at 325-326 (the doctrine serves to “relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources and, by preventing inconsistent decisions, encourage reliance on adjudication”) (citation omitted).

Again, although his latest motion makes no reference to Hinojosa’s prior attorney, Armando Cavada, the Court notes that Mr. Cavada previously testified that he had received from the United States the items of property listed by Hinojosa, and possessed them at one time. According to a sealed letter sent by Hinojosa to the Court in October 2009, Cavada has not returned all of the items to Hinojosa as Cavada stated he would. (See D.E. 57.) Again, the Court reaches no conclusions herein as to whether or not Hinojosa has a valid cause of action against Mr. Cavada for any failure on his part to return the seized items.

CONCLUSION

For the foregoing reasons, Hinojosa's latest motion seeking an order for the United States to return personal property seized at the time of his arrest (D.E .58) is DENIED for the reasons set forth in the Court's prior Order in C.A. No. C-08-141. Additionally, the Clerk is directed to provide copies of Docket Entries 19 and 20 in C.A. No. C-08-141 to Hinojosa along with his copy of this Order.

ORDERED this 29th day of January, 2010.



Janis Graham Jack
United States District Judge